IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

OP.No. 8690 of 1996(H)

CP.21/1992 of LABOUR COURT, ERNAKULAM
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PETITIONERS:
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1. **K.E.PAULOSE, CLOCK NO.1290, OG II, OIL DRYING SECTION, TRANSFORMERS AND ELECTRICALS KERALA LTD., ANGAMALY.**
2. **A.A.THOMAS, CLOCK NO.4C86, OG II, ...DO..DO....**
3. **M.I.THOMAS, CLOCK NO.863, OG II, ...DO..DO...**
4. **N.KARUNAKARAN NAIR, CLOCK NO.59, W.G.M....DO...DO...**
5. **A.N.SOMASUNDARAN NAIR, CLOCK NO.1361, OG III, ...DO....**
6. **P.A.SHAHUL HAMEED, CLOCK NO.1209, OG II, ..DO.DO...**
7. **K.C.SUDHAKARAN, CLOCK NO.278, OG II, .DO..DO...**
8. **P.J.CHACKO, CLOCK NO.733, OG I, ...DO....DO....**
9. **K.O.VAREED, CLOCK NO.79, OG I, ...DO...DO....**
10. **K.S.SUBRAMANIAN, CLOCK NO.78, OG I, ..DO..DO..**
11. **V.K.NARAYANAN, CLOCK NO.890, OG II, ...DO..DO..**
12. **P.K.VELAYUDHAN, CLOCK NO.900, OG II, ...DO.DO...**
13. **A.G.RAMAKRISHNAN NAIR, CLOCK NO.1298, OG II, ...DO...DO...**

..2/-

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14. V.A.PRAKASAN, CLOCK NO.912, OG II, OIL DRYING SECTION, TRANSFORMERS AND ELECTRICALS KERALA LTD., ANGAMALY.

15. C.C.JOSEPH, CLOCK NO.912, OG II, ...DO.....DO.....

16. M.I.PAUL, CLOCK NO.952, OG III, ...DO.....DO.....

17. A.S.THOMAS, CLOCK NO.937, OG III, ...DO.....DO.....

18. A.A.HARI, CLOCK NO.1451, OG III, ...DO.....DO.....

19. K.J.THOMAS, CLOCK NO.388, OG III, ...DO...DO.....

20. V.S.SUGATHAN, CLOCK NO.54, W.C.M.....DO....DO.....

21. K.G.DINESH, CLOCK NO.1511, OG III, ...DO....DO...

22. C.A.JOSE, CLOCK NO.1297, OG II, ...DO.....DO.....

23. T.E.MOHANAN, CLOCK NO.819, OG II, ..DO.DO....

24. R.SASIDHARAN PILLAI, CLOCK NO.536, OG II, ...DO...DO...

25. N.GOPALAKRISHNAN, CLOCK NO.1630, OG III, ...DO..DO...

BY ADV. SRI.M.V.JOSEPH

RESPONDENTS:
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1. THE PRESIDING OFFICER, LABOUR COURT, ERNAKULAM.

2. THE MANAGING DIRECTOR,
M/S. TRANSFORMERS AND ELECTRICALS (KERALA) LTD.,
ANGAMALY.

BY ADV. SRI.M.PATHROSE MATHAI, SC for R2

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBIT:

EXT.P1: COPY OF THE ORDER IN C.P.NO.21/92.

/TRUE COPY/

P.A. TO JUDGE

KSS

Thottathil B. Radhakrishnan, J.

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O.P.No.8690 of 1996

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Dated this the 20th day of July, 2007.

JUDGMENT

This writ petition is filed challenging the order passed by the Labour Court under Section 33-C(2) of the Industrial Disputes Act, 1947.

2. The establishment is bound by an award passed in I.D.1 of 1979 by the Industrial Tribunal, Calicut limiting the working hours to eight, including 30 minutes lunch break.

3. C.P.No. 10/84 was filed by some of the workmen contending that the term of the award regarding 30 minutes lunch interval was violation and therefore they are entitled to extra wages. The question arose as to whether such a claim could be determined under Section 33-C(2). The Labour Court answered it against the workmen. Among those workmen, who filed Section 33-C (2) petition (CP 10/84), five persons filed O.P.No.722 of 1986 before this Court challenging that decision of

the Labour Court. I may at once notice that four among the petitioners in O.P.No.722 of 1986 were Boiler Operators and one Mr.P.Muhammed was an Operator Grade II in the Oil and Drying Section of the establishment. This Court, by judgment dated 9-10-1990, held that the petitioners were entitled to monetary benefits for the extra work done and that the Labour Court was entitled to fix it under Section 33-C(2). A reading of paragraph 5 of that judgment will categorically show that this Court proceeded on the premise that the writ petitioners in that case were Boiler Operators. I may quote the learned Judge as follows:

> "As the petitioners who are Boiler Operators are bound to be available near the boilers throughout the period of their duty, even during lunch time they are on duty and it cannot be said that they are having an interval of 30 minutes".
>
> (Emphasis supplied)

4. On the basis of the aforesaid judgment, CP

10/84 was finally decided by the Labour Court fixing the actual monetary benefit due to the petitioners in that case in terms of the directions contained in the judgment of this Court. Thereafter, the writ petitioners in O.P.No.722/86 filed C.P.No. 58/91 before the Labour Court seeking similar reliefs for a subsequent period. The contest of the management based on facts were repelled by the Labour Court and relief was rendered in that case also on the definite premise that the claim made in C.P.No. 58/91 is one for the subsequent period and there is no ground to reduce the rate of extra wages claimed by the petitioners therein.

5. The five writ petitioners in O.P.No. 722 of 1986 having thus enjoyed the benefits of the aforesaid claim petition, the petitioners in this writ petition filed a claim petition, which has led to the impugned Ext.P1 order by the Labour Court which is against them and is therefore challenged in this writ petition.

6. All the writ petitioners in this case are

working in the Oil and Drying Section of the establishment. The bone of their contentions was the fact that Sri.Muhammed, the fifth petitioner in O.P.No.722 of 1986 and one among the petitioners in C.P.10/84 and C.P.58/91 were employed in the Oil and Drying Section and that therefore the orders in those claim petitions and the judgment in O.P.No.722 of 1986 form governable precedents to be applied in the case of the petitioners to answer the claim in their favour. By the impugned Ext.P3, the Labour Court noticed the clear distinction that the judgment in O.P.No.722 of 1986 and the orders made in C.P.No.10/84 and C.P.No.58/91 were essentially in favour of Boiler Operators and not in favour of Operators working in the Oil and Drying Section. As already noticed, the judgment in O.P.No.722 of 1986 proceeded on the basis that all the writ petitioners were Boiler Operators. May be that, Sri.Mohammed, the fifth petitioner therein was, as a matter of fact, not a Boiler Operator but only an Operator in the Oil and Drying Section. That is a matter, which would have escaped the notice of

this Court. The judgment in O.P.No.722 of 1986 will categorically show that it was not intended to inure to the benefit of any class or workman other than Boiler Operators. If that be so, the Labour Court is justified in taking the view that the orders in C.P.No.10/84 and C.P.No.58/91 have no bearing on the issue arising for decision in the case in hand.

7. With the aforesaid in mind, an analysis of the impugned order of the Labour Court would show that on the one hand was the assertion of the witness of the management as DW1 regarding the manner in which the duties and responsibilities are discharged by the Operators in the Oil and Drying Section and on the other hand was the evidence of PW1 that they had not been denied lunch. The Labour Court also took the view that production of the punch cards would have demonstrated whether the petitioners had actually enjoyed a lunch break of 30 minutes or whether they were provided lunch in such manner that their presence for the purpose of the establishment was ensured even

during the lunch break, thereby being made to work even during the lunch break ordered as per the Award in the ID case. But the fact of the matter remains that, the petitioners were essentially groping under the belief that their case is covered in their favour by the judgment in O.P.No.722 of 1986 and the orders in C.P.Nos.10/84 and 58/91.

8. In the aforesaid circumstances, being a matter relating to labour, I am inclined to take the view that it might have been a case where the presentation of their case by the workmen would have been misdirected and misguided on an erroneous premise as to the binding nature and applicability of the judgment in O.P.No.722 of 1986 and the orders in C.P.Nos.10/84 and 58/91. Such a situation would have deprived them of an appropriate opportunity to present the entire materials which they would have tendered in support of their case.

Hence, the impugned order is set aside and the

case is remitted to the Labour Court for a fresh consideration after giving the petitioners an opportunity of being heard and in the light of what is stated herein-above. It is clarified that the parties will be entitled to tender further evidence. Let a final decision be taken within a period of one year from the date of receipt of a copy of this judgment. The parties are directed to appear before the Labour Court on 20-8-2007.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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O.P.No.8690 of 1996

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JUDGMENT

Dated:20-7-2007